

# State could trump Hobby Lobby decision

The Olympian  
October 22, 2014



Michael Hichborn kneels and prays as he joins demonstrators while waiting for the Supreme Court's decision on the Hobby Lobby case outside the Supreme Court in Washington, Monday, June 30, 2014. The Supreme Court says corporations can hold religious objections that allow them to opt out of the new health law requirement that they cover contraceptives for women.(AP Photo/Pablo Martinez Monsivais)

PABLO MARTINEZ MONSIVAIS — AP

A group of Washington state senators hopes to prevent discrimination against women by employers who refuse to offer contraceptive coverage in their health-care plans. A bill they plan to introduce in the 2015 Legislature would overturn the effects of the U.S. Supreme Court's Hobby Lobby decision in the state of Washington.

It's a winning legal argument that would protect our state's long tradition of women's rights to reproductive health care, and specifically their access to insurer-provided birth control.

The legislation's political fate is less certain, especially if Republicans retain control of the Senate in this fall's elections. Anyone concerned about antidiscrimination protections for women, minorities and LGBT people should hope the bill succeeds.

The five Democratic senators – Karen Keiser, Jeanne Kohl-Welles, David Frockt, Kevin Ranker and Jamie Pedersen – would amend the Washington Law Against Discrimination to make the denial of contraceptive coverage an unfair practice.

But how could a state law trump a U.S. Supreme Court decision? It's simple, and similar legislation is being prepared in other states.

The U.S. Supreme Court's Hobby Lobby decision was based on a federal statute – the Religious Freedom Restoration Act (RFRA) -- not the Constitution. Therefore, the court's ruling applies only to federal actions, not action by the states.

Conservatives may wish to believe that the Hobby Lobby decision is based on the free exercise of religion clause of the First Amendment. But it's not so.

In fact, the court has found in other decisions that in certain circumstances government can make generally applicable regulations that happen to burden the religious freedom of some people. The Religious Restoration Freedom Act was a response to those decisions, requiring that federal regulations burdening religion be narrowly tailored to meet a compelling government interest.

In Hobby Lobby, the court ruled that because the federal government had already exempted church-based organizations from the Affordable Care Act's mandate for contraceptive coverage, the ACA was not narrowly tailored.

Because Hobby Lobby is based only on a federal statute, states are free to make laws and regulations requiring employers to cover women's reproductive health care in their insurance plans.

Our state senators intend to accomplish this through the state's anti-discrimination laws. It's a sound strategy.

Almost all of the state's employer-provided insurance plans cover a variety of male-specific drugs and services. Denying access to contraceptive care is gender discrimination against women.

It's important for this legislation to succeed. Hobby Lobby is opening up stores across Washington, including one in Olympia. Women who work for the national chain should have equal rights to health care.

Women's reproductive rights have a long and strong tradition in Washington. We voted to legalize abortion long before Roe v. Wade. We passed Initiative 120 in 1991 that protected women's rights to insurance coverage for abortions, regardless of any changes made to federal law.

Just over a year ago, the state Attorney General's Office found that public hospitals violate I-120 if they contract only with health care providers that do not offer reproductive care services. Specifically, if they provide maternity care, they must also offer abortion services.

Although the bill hasn't reached a final draft, its intended outcome – to protect women's access to contraceptive coverage in employer-provided insurance plans – is consistent with Washingtonian's values.

Read more here: [http://www.theolympian.com/2014/10/22/3383946\\_state-could-trump-hobby-lobby.html?sp=/99/109/207/&rh=1#storylink=cpy](http://www.theolympian.com/2014/10/22/3383946_state-could-trump-hobby-lobby.html?sp=/99/109/207/&rh=1#storylink=cpy)